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## STATE FUNDING OF RELIGIOUS ORGANIZATIONS IN GEORGIA

### Summary

This article aims to analyze the existing model of state funding of religious organizations in Georgia, taking into account its assumptions and nature and focusing on the problem of the preferential treatment of some religious organizations (especially the Georgian Orthodox Church). First, the key assumptions of funding religious organizations from public sources in Georgia are presented. Then, the article discusses the relevant case law of the Constitutional Court of Georgia. Finally, the challenges of the current model are identified, and some suggestions for the desirable changes in the system are made accordingly. It is argued that the future solutions in this area should respect the principle of secular state. The article concludes by indicating some possible European models that could be followed by the Georgian legislator.

**Key words:** church-state relations; funding of religious organizations; Georgia; Georgian Orthodox Church

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## I. INTRODUCTION

Religion is never fully private.<sup>1</sup> Despite a number of events, case law and legal practice of different nations, it still remains one of the most important and influential social factors. Many societies have made attempts to become *areligious*,<sup>2</sup> but it is always a complex process and depends on national culture, history and ethnical identity. Habermas even writes about post-secular societies, which passed the period of secularization and are now turning into the new reality, where religion becomes “public” anew.<sup>3</sup>

The new wave of immigration has given rise to new questions and new problems. Religion is a important part of many immigrants’ identity<sup>4</sup> and this has made Old Europe think about “lost” religious values that disappeared from the public life after the French Revolution as a result of the Enlightenment.<sup>5</sup> This situation is very familiar to post-communist and especially post-Soviet countries, where there is no experience of proper secularity (at the beginning, Soviet policy was anti-religious, but then it was transformed into the *Erastian* model<sup>6</sup>).

As far as Georgia is concerned, the Constitution recognizes freedom of belief, religion and conscience,<sup>7</sup> but at the same time the dominant Church

<sup>1</sup> See Victor Roudometof, “The Evolution of Greek Orthodoxy in the Context of World Historical Globalization”, in: *Orthodox Christianity in 21st Century Greece: The Role of Religion in Culture, Ethnicity and Politics*, ed. Victor Roudometof and Vasilios N. Makrides (Farnham: Ashgate 2010), 31.

<sup>2</sup> See Michel Rosenfeld, “Introduction: Can Constitutionalism, Secularism and Religion Be Reconciled in an Era of Globalization and Religious Revival?”, *Cardozo Law Review* 30 (2009): 2351.

<sup>3</sup> Jürgen Habermas, *Zwischen Naturalismus und Religion: Philosophische Aufsätze*, (Frankfurt am Mein: Suhrkamp, 2009), 119-154.

<sup>4</sup> Wouter de Been and Saune Taekema, “Religion in the 21<sup>st</sup> Century: Debating the Post-Secular Turn”, *Erasmus Law Review* 5, no.1 (2012): 1.

<sup>5</sup> Catherine M.A. McCauliff, “Dreyfus, Laïcité and the Burqa”, *Connecticut Journal of International Law* 28 (2012): 119.

<sup>6</sup> დიმიტრი გეგენავა, ეკლესია-სახელმწიფოს ურთიერთობის სამართლებრივი მოდელები და საქართველოს კონსტიტუციური შეთანხმება, თბილისი, 2018, 30 [dimitri gegenava, *eklesia-sakhelmtsipos urtiertobis samartlebrivi modelebi da sakartvelos konstitutsiuri shetankhmeba*, tbilisi, 2018, 30].

<sup>7</sup> “Everyone has freedom of belief, religion and conscience”, Constitution of Georgia, 24 August 1995, Art. 16(1).

has enough privileges and political authority to make the governmental secular policy quite “unclear”. The Georgian Orthodox Church and also four other religious organizations are financed by the state. This is officially called “partial and symbolic compensation”, but there are many questions about this model. This article overviews and analyzes the existing model of state funding of religious organizations in Georgia, taking into account especially the assumptions and nature of financial support, including the problem of the preferential treatment of some religious organizations.

## II. THE KEY ASSUMPTIONS OF FUNDING RELIGIOUS ORGANIZATIONS FROM PUBLIC SOURCES

### 1. THE BEGINNINGS OF THE CURRENT MODEL

There are many models of church-state relations all over the world, they have communalities and differences, but the finances and taxes are the spheres in which churches and states often collaborate and cooperate.<sup>8</sup> It is also the case in Georgia. The Constitutional Agreement between the Georgian Orthodox Church and the Georgian government, adopted in 2002, not only provides tax privileges and exemptions,<sup>9</sup> but also gives opportunity to the Church to demand many more privileges and funding.

The Constitutional Agreement recognized damage to the Church at the time of the Russian Empire, the Democratic Republic of Georgia and the Soviet Union during 19-20<sup>th</sup> centuries (in particular, in the period of 1921-1990). Moreover, the state took on the obligation to pay partial compensation for this damage.<sup>10</sup> A change of the political regime and the ensuing transformations always give rise to questions of compensation and reparation of the past injustices, and this is quite normal for the post-Soviet country which tries to end its post-Soviet era and aspires to development

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<sup>8</sup> Frank Cranmer, “National Churches, Territoriality and Mission”, *Law & Justice – Christian Law Review* 149 (2002): 161.

<sup>9</sup> All liturgical production of the Church, also its property and land are exempted from taxation. See: Constitutional Agreement between the Georgian Apostolic Autocephalic Orthodox Church and Georgian State, 14 October 2002, Art. 6(5).

<sup>10</sup> *Ibid.*, Art. 11(1).

and political balance. However, it is important to avoid making historical mistakes in this process.

Since 1801 the Russian Empire destroyed and damaged material and spiritual treasures of the Georgian nation, including a number of Georgian churches and castles. Georgia was conquered by the Empire and was the victim of the aggression, just as the Orthodox Church itself. The situation was not much different during the Soviet occupation in the years 1921-1990. Both in the 19<sup>th</sup> and 20<sup>th</sup> century, during both periods of occupation, Georgia was not an independent country. Therefore, it is hard to understand why the state should pay any compensation for the actions that it is not responsible for. Moreover, after the restoration of independence, Georgia did not recognize itself as the successor of the Soviet Union and declared the 1921-1990 period as occupation.<sup>11</sup> Compensation can be paid for the damages made by the Democratic Republic of Georgia in 1918-1921, when the social democratic government implemented its strict secular policy.<sup>12</sup>

## 2. COMPENSATION FOR THE ORTHODOX CHURCH OF GEORGIA

At the beginning of the 1990s, when the governmental institutions and other state bodies did not function properly the Church effectively over-

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<sup>11</sup> “(1) The statehood of Georgia that dates back to ancient times was lost by the Georgian nation in the 19th century following the annexation of Georgia by the Russian Empire, which suppressed the Georgian statehood. The Georgian people have never accepted the loss of freedom. The suppressed statehood was restored on 26 May 1918 by the proclamation of the Act of Independence. The Democratic Republic of Georgia was established, with the bodies necessary to represent state authority, elected on a multi-party basis and with the Constitution. (2) In February-March 1921, Soviet Russia violated the peace agreement of 7 May 1920 between Georgia and Russia, and in an act of aggression, occupied the state of Georgia, previously recognised by Russia. This was subsequently followed by the de facto annexation of Georgia. (3) Georgia did not join the Soviet Union voluntarily, and its independent statehood has persisted to this day, and the Act of Independence and the Constitution still have legal force, because the Government of the Democratic Republic never signed an agreement relinquishing its independence, and continued to work in exile”; Act of Restoration of Independence of Georgia, 9 April 1991.

<sup>12</sup> Dimitry Gegenava, “Church-State Relations in the Democratic Republic of Georgia (1918-1921)”, *Studia z Prawa Wyznaniowego* 21 (2018): 255-266.

took various state functions and become the guarantor of nationality.<sup>13</sup> This situation logically conditioned very tight and extraordinary collaboration of the Georgian state and the Church. Since 2002, when the Constitutional Agreement was adopted, the Georgian Orthodox Church has attempted to dominate the religious landscape and be the only religious leader of the society (the Constitutional Agreement is in fact one of the results of these attempts).<sup>14</sup> According to the Constitutional Agreement, the Georgian government recognized the damage to the Church and took responsibility for the compensation. The state officially gives 25 million GEL to the Church, but no legal document formally defines it as “compensation”, and only the purposive interpretation of the whole legislation makes it possible to reach such a conclusion, which can hardly be considered appropriate in the case of such serious questions.

The Georgian Orthodox Church receives not only direct budgetary funding, but also other material resources such as real estates.<sup>15</sup> The Patriarchate of the Church gets funding from the central national budget as well as from the budgets of local self-governments, the reserve funds of the President and the Council of Ministers of Georgia.<sup>16</sup> In 2002-2013, the Georgian state transferred over 160 million GEL to the Church.<sup>17</sup> In

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<sup>13</sup> See Steven F. Jones, “Soviet Religious Policy and the Georgian Orthodox Apostolic Church: From Khrushchev to Gorbachev”, *Religion, State and Society: The Keston Journal* 17, no. 4 (1989): 292-312.

<sup>14</sup> სალომე მინესაშვილი, საქართველოს მართლმადიდებელი ეკლესია, როგორც სამოქალაქო აქტორი: გამოწვევები და შესაძლებლობები, პოლიტიკის დოკუმენტი, N8, მაისი 2017, 10 [salome minesashvili, sakartvelos martlmadidebeli ekleisia, rogorct samokalako aktori: gamotsvevi da shesadzleblobebi, politikis dokumenti, N8, mai 2017, 10].

<sup>15</sup> *Policy of the State Funding of Religious Organizations: Analysis of the 2014-2015 Practice* (Tbilisi: Tolerance and Diversity Institute and Human Rights Education and Monitoring Center, 2016), 8.

<sup>16</sup> ქრისტინე მარგველაშვილი, მართლმადიდებელი ეკლესიის გავლენა: პოლიტიკური პროცესები და არჩევნები საქართველოში, წიგნში: რელიგია, საზოგადოება და პოლიტიკა საქართველოში, თბილისი, 2016, 6 [kristine margvelashvili, martlmadidebeli ekleisiis gavlena: politikuri protsesebi da archevnebi sakartveloshi, tsignshi: religia, sazogadoeba da politika sakartveloshi, tbilisi, 2016, 6].

<sup>17</sup> *Study of Religious Discrimination and Constitutional Secularism in Georgia* (Tbilisi: Tolerance and Diversity Institute, 2014), 25; “An Overview of the Public Funding Provi-

2009-2013, the annual financial support for the Patriarchate of the Church varied from 22 to 27 million GEL, but since 2013 the annual budgetary funding is strictly 25 million GEL.<sup>18</sup> This is connected with the fact that the subsidies from the reserve funds of the central state authorities were decreased.<sup>19</sup> The largest part of the funding received by the Church in the years 2014-2015 was spent on salaries and bonuses to workers and priests, and only the remaining part was used to support real estates such as churches and monasteries.<sup>20</sup>

The main purpose of the Patriarchate's expenditures is to support spiritual education and raise youth with Christian values (more than 70 educational units and NGOs of the Georgian Patriarchate receive money for this purpose).<sup>21</sup> For many years, the official budget did not provide for expenses of this kind, because they were treated as extraordinary (as a certain kind of "gift") and thus making the subsidy to the Church was not mandatory. However, after the discussions, the state budget includes the expenses at issue. It needs to be stressed, however, that these funds are not subject to state financial control or auditing obligations.

The Georgian Orthodox Church gets additional funding from the local (municipal) self-governments.<sup>22</sup> Local governments have their own programmes and ways to financially support religious organizations.<sup>23</sup> Municipal funding of religious organizations is under the special budgetary sub-programme – "Support of Religious Organizations".<sup>24</sup> More than 90%

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ded to the Georgian Patriarchate", Transparency International Georgia, July 4, 2013, <https://www.transparency.ge/en/blog/overview-public-financing-provided-georgian-patriarchate>.

<sup>18</sup> *Freedom of Religion: Critique of Discriminatory and Nonsecular State Policy* (Tbilisi: Human Rights Education and Monitoring Center, 2016), 41.

<sup>19</sup> *Practice of Funding Religious Organizations by Central and Local Governments / The review of the condition of 2013 and the beginning of 2014 years and the review of the policy change after transition of the government/* (Tbilisi: Tolerance and Diversity Institute and Human Rights Education and Monitoring Center, 2014), 47.

<sup>20</sup> *Policy of the State Funding*, 8.

<sup>21</sup> *Freedom of Religion*, 41.

<sup>22</sup> *Study of Religious Discrimination*, 25; "State Funding to Strengthen the Orthodox Faith", Tolerance and Diversity Institute, February 18, 2014, <https://tdigeorgia.wordpress.com/2014/02/24/state-funding-to-strengthen-the-orthodox-faith/>.

<sup>23</sup> *Practice of Funding Religious Organizations*, 48.

<sup>24</sup> *Policy of the State Funding*, 12.

of the municipal finances for religious organizations are for the Georgian Orthodox Church, and it is noteworthy the highest financial support for the Georgian Patriarchate is given by the local governments of the municipalities where the most part of the registered population is not Orthodox.<sup>25</sup> Municipal funding of the Church goes not only to dioceses or monasteries, but sometimes also to private bank accounts of spiritual hierarchs and leaders.<sup>26</sup>

### 3. COMPENSATION FOR OTHER RELIGIOUS ORGANIZATIONS

The Georgian Orthodox Church recognizes only “traditional” religions – the Roman Catholic and Armenian Churches, as well as the Jewish and Muslim communities, while all others are out of its interest.<sup>27</sup> In fact, the Georgian state follows the Georgian Orthodox Church, and this is why in 2014 the government decided to begin funding these four religious organizations (actually the number of organizations was bigger, but Catholics and Muslims created representative councils)<sup>28</sup> and this decision was explained as the way to eliminate the “previously existing discriminative practice”.<sup>29</sup>

According to the governmental position, this funding is neither compensation nor restitution (in fact, no one had calculated the damage<sup>30</sup>), but bears a “symbolic character”.<sup>31</sup> Actually funding four religious organiza-

<sup>25</sup> *Practice of Funding Religious Organizations*, 48.

<sup>26</sup> *Ibid.*

<sup>27</sup> სალომე მინესაშვილი, საქართველოს მართლმადიდებელი ეკლესია, როგორც სამოქალაქო აქტორი: გამოწვევები და შესაძლებლობები, პოლიტიკის დოკუმენტი, N8, მაისი 2017, 10 [salome minesashvili, sakartvelos martlmadidebeli eklesia, rogorst samokalako aktori: gamotsvevi da shesadzleblobebi, politikis dokumenti, N8, mai 2017, 10].

<sup>28</sup> See Decree No. 117 of the Government of Georgia, 27 January 2014.

<sup>29</sup> *Freedom of Religion*, 40.

<sup>30</sup> <https://tdi.ge/ge/page/religiuri-organizaciebis-saxelmcipo-dapinansebis-politika-da-praktika-2015-2016> [access: 12.07.2019].

<sup>31</sup> “Funding of four religious organizations, provided by Decree No. 117 of the GoG dated by 27 January 2014, shall not be considered as compensation or restitution for any established damage, but bears rather a symbolic character because the amount of the damage received during the Soviet totalitarian regime is unknown. Accordingly, criteria for defining amount of financial assets take into account current circumstances related to those religious

tions is not compensation,<sup>32</sup> declared in Decree No. 117, but direct funding from the government,<sup>33</sup> which gives rise to a number of questions.

The government has implemented strict mechanisms of accountability and regulations for the four religious organizations on permissible ways of spending allocated funds.<sup>34</sup> The Agency of Religious Affairs obliges them in special agreements to use the money for strictly religious purposes: remuneration for religious activities of the clergy; restoration and maintenance of cult and religious buildings; religious educational activities; household expenses of religious organizations; cultural and charity activities<sup>35</sup> (the agreement with the Muslim community includes an additional restriction that 75% of the funds must be spent on salaries and only the rest of the money – for other purposes<sup>36</sup>). Since all these purposes are confessional, some experts claim that this model of state funding of the four religious organizations can be qualified as indirect funding of religion.<sup>37</sup>

Within one month of signing the agreement, religious organizations are obliged to submit a spending plan of the money taking into consideration the purposes specified in the agreement.<sup>38</sup> Religious organizations are obliged to submit interim and final reports about their expenses according to the agreement, and the Agency is authorized to terminate contracts with a religious organization if its expenses are contradictory to the purposes stated in the agreement.<sup>39</sup> The funds for religious organizations are paid out periodically, and the Agency of Religious Affairs determines the exact

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organizations.” See “The Government of Georgia Comments on the ECRI report on Georgia (fifth monitoring cycle) 2016”, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/> [access: 10.07.2019].

<sup>32</sup> <https://tdi.ge/ge/page/reliigiuri-organizaciebis-saxelmcpo-dapinansebis-politika-da-praktika-2015-2016> [access: 12.07.2019].

<sup>33</sup> *Freedom of Religion*, 46.

<sup>34</sup> *Ibid.*, 40.

<sup>35</sup> *Ibid.*, 43.

<sup>36</sup> <https://emc.org.ge/ka/products/otkhi-reliigiuri-organizatsiis-dafinansebis-praktikis-samartlebrivi-shefaseba> [access: 6.07.2019].

<sup>37</sup> *Policy of the State Funding*, 11.

<sup>38</sup> *Freedom of Religion*, 47.

<sup>39</sup> *Ibid.*

dates and proportions according to which the funds are divided among religious organizations.<sup>40</sup>

Municipal budgets include programmes for the support of religious organizations, but this support is insignificant;<sup>41</sup> in practice only up to 10% of this money is distributed among all religious organizations with the exception of the Georgian Orthodox Church.<sup>42</sup>

### III. CASE LAW OF THE CONSTITUTIONAL COURT OF GEORGIA

The case law of the Georgian Constitutional Court concerning state funding of religious organizations may not be rich, as there are not too many decisions or judgments in this regard. Nevertheless, several cases were handled by the Court.

The Legal Entity of Public Law (LEPL) “Georgian Church of Evangelical Faith” demanded to annul state funding for the four religious organizations on grounds of the fact that not only these organizations were damaged by the Soviet totalitarian regime, and that “partial” and “symbolic” restitution was unconstitutional and discriminative. The Constitutional Court of Georgia declared that the Georgian Church of Evangelical Faith was not a direct subject of the norm. Although Decree No. 117 enumerated four religious organizations and the government decided to give them symbolic compensation, this did not exclude any other religious organization to receive such compensation in the future if the government decided to do so.<sup>43</sup> The Court also ruled that as the claimant was not representative of any of those four organizations, “partial” or “symbolic” compensation did not concern it and, as a consequence, the Court could not consider the relevant norms of the Decree to be unconstitutional.<sup>44</sup>

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<sup>40</sup> <https://emc.org.ge/ka/products/otkhi-religiuri-organizatsiis-dafinansebis-praktikis-samartlebrivi-shefaseba> [access: 6.07.2019].

<sup>41</sup> *Policy of the State Funding*, 12.

<sup>42</sup> *Practice of Funding Religious*, 48.

<sup>43</sup> “The Georgian Church of Evangelical Faith” v. Government of Georgia, Judgement No. 2/8/615 of the Constitutional Court of Georgia (29 December 2016), II, 5.

<sup>44</sup> *Ibid.*, II, 11.

There is no other legal act beside the annual law on state budget that states the amount of financial support for the Georgian Orthodox Church. That is why the claimants made two attempts to challenge the constitutionality of the annual law on state budget, but the Court dismissed the claim twice: before the Court scheduled a court hearing, the budgetary year ended and thus the law on state budget of the last year was automatically was no longer valid.<sup>45</sup> The claimants demanded that the Court should decide about the end of the binding force of the norms of the law concerning the state funding of the Georgian Orthodox Church. They argued that this funding was not compensation, but direct and non-secular (confessional) support for the Church.<sup>46</sup> The Court reviewed the third claim and issued the relevant judgment.

The Constitutional Court of Georgia stated that the claimants' understanding of the challenged norms was wrong, because they should not be understood as establishing any church tax especially in favour of the Georgian Orthodox Church. Setting budgetary priorities and drafting the budget is exclusively at the discretion of the government.<sup>47</sup> The Court also declined the claimants' argumentation that they took part in the funding of the religious organizations against their will, and stated that the challenged norms did not concern income tax and could not be interpreted as impacting anyone's beliefs.<sup>48</sup>

The Constitutional Court declared that the norms of the annual state budget funding the Georgian Orthodox Church did not make anyone take part in the funding. The case concerned only the ways of dividing the accumulated state funds and there was no discrimination against the claimants.<sup>49</sup>

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<sup>45</sup> See *Citizens of Georgia – Ekaterine Aghdgomelashvili, Lina Ghvinianidze and Sophiko Verdzeuli v. Parliament of Georgia*, Judgement No. 2/2/749 of the Constitutional Court of Georgia (27 January 2017), II, 2; *Citizens of Georgia – Ekaterine Aghdgomelashvili, Lina Ghvinianidze, Sophiko Verdzeuli, Tamta Nanishvili, Nana Salishvili and Tamar Kordzaia v. Parliament of Georgia*, Judgement No. 1/3/1215 of the Constitutional Court of Georgia (19 October 2018), II, 2.

<sup>46</sup> See *Citizens of Georgia - Ekaterine Aghdgomelashvili, Lina Ghvinianidze, Sophiko Verdzeuli, Tamta Nanishvili, Nana Salishvili and Tamar Kordzaia v. Parliament of Georgia*, Judgement №1/3/1215 of the Constitutional Court of Georgia (19 October 2018), I, 7.

<sup>47</sup> *Ibid.*, II, 6.

<sup>48</sup> *Ibid.*, II, 7.

<sup>49</sup> *Ibid.*, II, 11-12.

#### IV. CHALLENGES OF THE CURRENT MODEL AND THE NEED FOR CHANGES

Funding the Patriarchate of the Georgian Orthodox Church is a hotly debated topic in contemporary Georgian society.<sup>50</sup> Before 2012, the decisions about increasing the state funding for the Georgian Orthodox Church were always taken in the proximity of the election period in the country.<sup>51</sup> “Funding of religious organizations had different political connotation under different governments. During United National Movement’s [...] governance, interrelations between political government and church leadership were antagonistic and in this regards funding was an instrument of restraining church resistance, taming and overcoming political crisis.”<sup>52</sup> Since 2012 the funding has not been linked to the elections, but the relations between the government and the Church have stabilized.<sup>53</sup> The main problem of funding the Georgian Orthodox Church is the transparency of spending.<sup>54</sup> The government does not estimate the value of real estates which are granted to the Church, so it is impossible to calculate the extent of the total amount of compensation.<sup>55</sup> Moreover, it should also be noted that the funding and real estates given to the Church are used for non-secular purposes. It is especially a problem on the municipal level, where the spending purposes are often even not declared.<sup>56</sup>

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<sup>50</sup> ქრისტინე მარგველაშვილი, მართლმადიდებელი ეკლესიის გავლენა: პოლიტიკური პროცესები და არჩევნები საქართველოში, წიგნში: რელიგია, საზოგადოება და პოლიტიკა საქართველოში, თბილისი, 2016, 6 [kristine margvelashvili, martlmadidebeli eklesiis gavlena: politikuri protsesebi da archevnebi sakartveloshi, tsignshi: religia, sazogadoeba da politika sakartveloshi, tbilisi, 2016, 6].

<sup>51</sup> *Policy of the State Funding*, 11.

<sup>52</sup> *Freedom of Religion*, 40.

<sup>53</sup> *Policy of the State Funding*, 11.

<sup>54</sup> ქრისტინე მარგველაშვილი, მართლმადიდებელი ეკლესიის გავლენა: პოლიტიკური პროცესები და არჩევნები საქართველოში, წიგნში: რელიგია, საზოგადოება და პოლიტიკა საქართველოში, თბილისი, 2016, 6 [kristine margvelashvili, martlmadidebeli eklesiis gavlena: politikuri protsesebi da archevnebi sakartveloshi, tsignshi: religia, sazogadoeba da politika sakartveloshi, tbilisi, 2016, 6].

<sup>55</sup> *Policy of the State Funding*, 10.

<sup>56</sup> <https://tdi.ge/ge/page/religiuri-organizaciebis-saxelmcipo-dapinansebis-politika-da-praktika-2015-2016> [access: 6.07.2019].

The current model of funding can be used by governing bodies as an instrument to win favour from the Church through financial support.<sup>57</sup> This model endangers the principle of secular state.<sup>58</sup> Secular governance is one of the basic principles in Georgian public administration; it consists in the separation of political and religious institutions and religion in general.<sup>59</sup> According to some experts, the funding of the Orthodox Church “is only based on the political will of state, which creates a high risk of an arbitrary state in this matter, and it furthermore violates the constitutional principle of secularism”.<sup>60</sup>

Protection of religious minorities is the basic principle of public service and public governance. It includes not only negative (protective) aspects, but also positive obligations on the part of the state to guarantee the possibility of realizing their religious rights in practice.<sup>61</sup> On the one hand, the government’s decision to support the four religious organizations is a very good step forward to creating a religiously tolerant environment, but on the other hand, the criteria and amount of the state funding of these religious organizations are not clear and proportional:<sup>62</sup> “Transferring money to four religious organizations is conducted without fair and objective criteria related to damage.”<sup>63</sup> These religious organizations are also treated favourably by the Georgian Orthodox Church, which, by collaborating with them, preserves its privileged position and keeps the status quo on the “religious market”.<sup>64</sup>

<sup>57</sup> *Practice of Funding Religious Organizations*, 47.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Secularism and Religious Neutrality in Public Service: Practical Handbook for Public Servants* (Tbilisi: Z. Vashakmadze, 2016), 6; See the Constitution of Georgia, 24 August 1995, Art. 8; Law of Georgia on Public Service, 27 October 2015, Art. 9.

<sup>60</sup> *Freedom of Religion*, 45.

<sup>61</sup> *Secularism and Religious Neutrality*, 7.

<sup>62</sup> *Policy of the State Funding*, 11.

<sup>63</sup> *Freedom of Religion*, 46.

<sup>64</sup> სალომე მინესაშვილი, საქართველოს მართლმადიდებელი ეკლესია, როგორც სამოქალაქო აქტორი: გამოწვევები და შესაძლებლობები, პოლიტიკის დოკუმენტი, N8, მაისი 2017, 10 [salome minesashvili, sakartvelos martlmadidebeli eklesia, rogorc samokalako aktori: gamotsvevebi da shesadzleblobebi, politikis dokumenti, N8, maisi 2017, 10].

Unlike in the case of the Orthodox Church, control over the expenditure of the four religious organizations is accompanied by a high risk of interference in religious autonomy.<sup>65</sup> Strict accountability and supervision of spending raises strong doubts about the real intentions of the government for controlling religious organizations.<sup>66</sup> Unfortunately, state supervision on spending the money performed on the pretext of “achieving the aims of the agreement” more clearly resembles intensive direct control, where the Agency of Religious Affairs is used as an instrument of controlling daily accounting and financial activities of religious organizations. It is hard not to notice a high risk of infringing on the independence of religious organizations as legal entities;<sup>67</sup> it additionally creates favourable conditions for their political instrumentalization by the government.<sup>68</sup> This undoubtedly violates the principle of church-state separation.

#### V. CONCLUSION

Social institutions and their influence on society are different in every country. This question cannot be discussed without taking into account aspects of cultural anthropology, sociology and ethno-psychology. The Georgian Orthodox Church has had a significant impact on saving Georgian national identity and continually aspires to play this role. One of the consequences is that the state-church relations are shaped in an untypical way, which is manifested in particular in the system of state funding of religious organizations. Although granting them even “symbolic” and “partial” compensation seems to be a positive move (especially when it is not obligatory), the real purposes of this financial support should not be reduced to exerting control over the most influential religious organizations in the country.

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<sup>65</sup> *Policy of the State Funding of Religious Organizations*, 11.

<sup>66</sup> *Freedom of Religion*, 40.

<sup>67</sup> *Ibid.*, 47.

<sup>68</sup> <https://tdi.ge/ge/page/religiuri-organizaciebis-saxelmcipo-dapinansebis-politika-da-praktika-2015-2016> [access: 12.07.2019].

Funding the Georgian Orthodox Church rather resembles an attempt to prevent the Church from acting against the government and to gain its support in many areas of social relations. In contrast, funding of four other largest religious communities of Georgia seems to be an instrument of exerting direct control over them by monitoring their finances and expenses. This can be interpreted as the state's interference in the autonomy of religious organizations and additionally it can also be considered breach of religious freedom.

There are many models of funding religious organizations that are used in the modern world. In many of them, there are no questions regarding religious freedom and secular character of the governmental policy. For example, the Spanish or German tax systems, in which the state is just a mediator or collector of church tax, can serve as points of reference for Georgia as they appear to be more adequate for modern countries. However, these solutions should not include any obligatory "church tax", and every person should be allowed to decide whether to pay it or not. In this postulated model, the Georgian state will accumulate these funds and then distribute them among the religious organizations entitled to receive them. In this way, there would be no preferential treatment and the questions about the non-secular governmental policy or prospective discrimination would not arise. The state would lose its power to influence the church-state relations in an inappropriate way. Decisions in this regard could only be made by people. Otherwise, every government may try to exert an impact on religious organizations in order to remain the most powerful actor on the national stage.

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## FINANSOWANIE ZWIĄZKÓW WYZNANIOWYCH W GRUZJI Z BUDŻETU PAŃSTWA

### Streszczenie

Niniejszy artykuł analizuje obecny model państwowego finansowania związków wyznaniowych w Gruzji, biorąc pod uwagę jego założenia oraz naturę i koncentrując się na problemie uprzywilejowanego traktowania niektórych związków wyznaniowych (w szczególności Gruzińskiego Kościoła Prawosławnego). Jako pierwsze zaprezentowano kluczowe założenia finansowania związków wyznaniowych ze środków publicznych w Gruzji. Następnie artykuł przybliży orzecznictwo gruzińskiego Trybunału Konstytucyjnego odnoszące się do omawianych kwestii. Na koniec wskazano wady obecnego modelu oraz zaprezentowano kierunki pożądanych zmian w systemie finansowania związków wyznaniowych. Autor argumentuje, że przyszłe rozwiązania w tym zakresie powinny w większym stopniu uwzględniać zasadę świeckości państwa. Artykuł wieńczy wskazanie możliwych wzorców europejskich, do których powinien odnieść się gruziński ustawodawca.

**Słowa kluczowe:** relacje Państwo-Kościół; finansowanie związków wyznaniowych; Gruzja; Gruziński Kościół Prawosławny

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